

Planning & Zoning Commission Meeting  
Minutes of September 5, 2012  
1st Floor North Conference Room - City Hall

**Present:** Chairman Nathaniel Cannady, Vice-Chairman Jeremy Goldstein, Kristy Carter, Jane Gianvito Mathews, Joe Minicozzi, Holly P. Shriner and Paul Smith

**Absent:** None

**Pre-Meeting - 4:30 p.m.**

At their Pre-Meeting the newly appointed Commissioner Joe Minicozzi was introduced. There was then a presentation by Ms. Janet Whitworth, the Chair of the Board of Adjustment, and discussion of the interrelationship between the work of these two boards. It concluded with a brief discussion on the procedures for an agenda item requiring the Commission to act as a Board of Adjustment.

**Regular Meeting - 5:00 p.m.**

Vice-Chairman Cannady called the meeting to order at 5:00 p.m. and informed the audience of the public hearing process.

**Administrative**

- ? On behalf of the entire Commission, Vice-Chairman Cannady was pleased to welcome new Commissioner Joe Minicozzi as the new Planning & Zoning Commission member.
- ? Vice-Chairman Cannady thanked former Chairman Mark Brooks for his service to the citizens of Asheville.
- ? Ms. Carter moved to approve the minutes of the August 1, 2012, meeting, with the non-substantive changes. This motion was seconded by Mr. Goldstein and carried unanimously by a 7-0 vote.
- ? Ms. Shriner nominated Vice-Chairman Cannady as Chairman. Ms. Carter nominated Ms. Mathews as Chairman. After the vote for Chairman, Vice-Mayor Cannady received 4 votes (Vice-Chairman Cannady, Mr. Goldstein, Ms. Shriner and Mr. Smith) and Ms. Mathews received 3 votes (Ms. Carter, Ms. Mathews and Mr. Minicozzi). Therefore, Vice-Chairman Cannady was appointed as Chairman.
- ? Mr. Goldstein nominated Ms. Mathews as Vice-Chairman. Mr. Smith nominated Mr. Goldstein as Vice-Chairman. After the vote for Vice-Chairman, Mr. Goldstein received 4 votes (Chairman Cannady, Mr. Goldstein, Ms. Shriner and Mr. Smith) and Ms. Mathews received 3 votes (Ms. Carter, Ms. Mathews and Mr. Minicozzi). Therefore, Mr. Goldstein was appointed as Vice-Chairman.
- ? It was the consensus of the Commission to continue the conditional zoning request for the project identified as Leasing and Equipment Sales Company Inc. to October 3.

**Agenda Items**

- (1) **Downtown project variance, 91 Biltmore Avenue – The project identified as Wicked Weed Brewery is seeking variances from development standards found in Section 7-8-18 of the Unified Development Ordinance pertaining to a proposed addition to**

**an existing building. The property is identified in the Buncombe County tax records as PIN 9648-49-4195.**

City Attorney Oast explained the procedures for this item which requires the Commission to act as a Board of Adjustment and all testimony needs to be sworn. Mr. Minicozzi and Mr. Smith would participate only in this matter as Alternates and both left the dais.

City Clerk Magdalen Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast asked if any Commissioner had any special knowledge associated with this project that they disclose it at this time. No one spoke.

Urban Planner Alan Glines oriented the Commission to the site and said that the applicant is requesting two (2) variances pertaining to the addition to an existing building in the Central Business District (CBD):

- ? Section 7-8-18(f)(5)(b) "Maximum setback: Zero feet from the right-of-way line. The following exceptions to the maximum setback may be permitted....a setback of up to 20 feet for uses in the district providing courtyard or plaza spaces in the setback area." The addition to the existing building will be setback 62 feet from the property line; and
- ? Section 7-8-18(f)(7) which states that "the minimum height for new structures in the Central Business District will be two stories." Like the existing building, the building addition is proposed to be one-story.

The applicant is renovating and expanding an existing one-story building to provide kitchen space for a new restaurant and brewery. The expansion is also proposed to be one-story and would be much smaller than the existing footprint and subordinate to the main building in design, and accessory in function. The existing building is setback 40 feet and the addition will be placed 22 feet further back to have a setback of 62'. Also included in the site plan are renovations to the outdoor areas in order to create two separate outdoor dining and lounge areas between the building and the street.

The design (scale, setback, height, orientation) of the addition are tied to the existing building and reflect its features. The site is located in the Central Business District (CBD). This project is considered a Level I review pursuant to Section 7-5-9.1 of the UDO.

Other Considerations:

- ✍ The total building size is proposed to be 6,700 s.f. (including the 970 s.f. addition) and this project is considered a Level I, pursuant to Section 7-5-9.1 of the UDO.
- ✍ Per the review process in Section 7-5-9.1(b)(10), the Downtown Commission will provide a recommendation on all variance requests considered by the Planning & Zoning Commission. On August 10, 2012, the Downtown Commission reviewed this development proposal and voted to recommend approval of the variance requests on a vote of 7-0.
- ✍ Since both variance requests are tied to the building addition they will be described together for the review of the findings.

**FINDINGS:**

***Conclusion 1 - There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.***

Test 1 - If made to comply with the provisions of the ordinance, the property owner cannot make reasonable use of the property.

Older commercial structures often have to be adapted in order to be usable for a new business venture. Part of this adaptation may include renovation and additions when there is insufficient space for the proposed new activity within the existing building. The comprehensive plan of the City encourages the adaptive reuse of older structures, especially historic structures because it protects the character of the community and is a sustainable practice. The existing building is non-conforming to both setback and height standards and is a 'grandfathered' building.

When changes to the UDO were adopted based on the downtown master plan there was no provision made for additions to existing buildings. The proposed restaurant and brewery will not physically fit into the existing structure without the addition, and a two-story addition would be impractical for a kitchen layout and operation. Similarly, a 0' setback would also be impractical for a kitchen layout by forcing the kitchen to the front of the property and would also displace the proposed outdoor dining areas.

Without the requested variances, this building is impractical for adaptive reuse and may remain vacant.

Test 2 - The hardship of which the applicant complains results from unique circumstances related to the applicant's land.

The existing building was built around 1941 and has a large setback and is also single-story. Several buildings in the vicinity of this site are also single story structures with large setbacks and when they were built they marked the transition from the traditional downtown core identified by taller structures built to the edge of the sidewalk, to commercial corridor development where single story structures and larger setbacks were more common. Due to a natural growth pattern radiating from the downtown core, the area of Asheville's downtown has grown over the years to include some of these older single story structures that are more challenged in meeting downtown development standards.

Test 3 - The hardship is not the result of the applicant's own actions.

The existing one-story building was built as a gas station and was set back from the street to allow for vehicular access by patrons (still a characteristic of most gas stations today). The addition is not a stand-alone building and is tied to the existing structure whose design is not the result of the applicant's own actions.

***Conclusion 2 - The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.***

Re-use and renovation of historic buildings is a goal of the downtown master plan, the adopted sustainability policy, and the downtown design guidelines. The project proposes to retain the existing building which is a contributing structure within the downtown historic district (National Register District). In order to adapt the existing historic building for a new proposed use, an addition is required. The addition and renovation is in scale with the setback and height of the existing building and therefore is in harmony with the ordinance and with the established character of the area.

***Conclusion 3 - The granting of the variance secures the public safety and welfare and does substantial justice.***

The requested variances to height and setback will not compromise public safety or welfare in any way, nor does it impact another property owner's use of their property. A building addition is a reasonable expectation to the reuse of a historic structure, and by granting the variances in order to support other goals substantial justice is assured.

Staff recommends approval of the requested variances to allow the proposed one-story addition. These variances include: (1) Allowing a one-story addition (where two-stories are normally required for new construction); and (2) Extending the setback to 62 feet for the addition.

Staff finds this request to be reasonable and support the goals of downtown and other City adopted plans.

Chairman Cannady opened the public hearing at 5:21 p.m. and when no one spoke, he closed the public hearing at 5:21 p.m.

Based on the above findings and the analysis provided in the report, Vice-Chairman Goldstein moved to allow a one-story addition (where two-stories are normally required for new construction). This motion was seconded by Ms. Mathews and carried unanimously on a 5-0 vote.

Based on the above findings and the analysis provided in the report, Ms. Shriner moved to extend the setback to 62 feet for the addition. This motion was seconded by Ms. Carter and carried unanimously on a 5-0 vote.

**(2) Ordinance amending Article 11 of Chapter 7 of the Code of Ordinances to update standards for outdoor lighting.**

Assistant Director of Planning & Development Shannon Tuch said that this is the consideration of an ordinance amending Article 11 of Chapter 7 of the Code of Ordinance to update standards for outdoor lighting.

At the August 1, 2012, Planning & Zoning Commission meeting, staff presented an update to the City's existing standards on Outdoor Lighting. Those changes were summarized in an accompanying staff report. During the presentation, it was discussed that the changes were reviewed through several stakeholders and only one proposed change did not receive unanimous support from the stakeholders. The stakeholders were somewhat divided on the issue of establishing an appropriate B-U-G rating for LED post-top, decorative area lights. The standard for non-LED fixtures remains unchanged.

B-U-G ratings are a relatively new rating classification used for LED technology and includes a separate numeric number rating for each subcategory of Backlight, Uplight, and Glare. The lower the number, the more restrictive the standard. SACEE, who had sponsored this amendment, has proposed a requirement for LED streetlights that meets the City's specifications and does not have a BUG rating greater than B1-U1-G1 for residential streets, and B3-U3-G3 for commercial streets. SACEE also expressed a desire to encourage the use of LED lights in other applications but not make the use of LED's mandatory. Additional research into available LED post-top, decorative fixtures suggests that the more ornamental design of post-top, decorative fixtures presents challenges to meeting a more desirable or restrictive BUG rating.

It is unclear from SACEE whether they think it would be preferable to compromise the environmental standards for uplight and glare (backlight is not as concerning) in order to encourage the use of more energy efficient LED fixtures, or if it is preferable to establish a strict

standard that limits options and wait for the industry to respond with better designs. The latter strategy has shown to be a reasonable approach, with new designs that respond to municipal standards and market preferences being developed on an almost weekly basis. However, the designs that are currently available would likely be more contemporary and pretty limited - resulting in either a different daytime character, or the use of non-LED fixtures where there are more options available. Staff is meeting with SACEE on September 19th to review this issue and gain their input as well.

As a result of the staff research, it seems that establishing a standard of B3-U2-G2 would likely provide for a comfortable range of options while still controlling some amount of the negative environmental impacts. She showed examples of fixture options and provided the Commission with more detail regarding these fixtures. The results of this discussion and the Commission's recommendation will be shared with SACEE on September 19th and, should the recommendation from SACEE differ from the Commission's, both recommendations and accompanying details will be shared with the City Council for their consideration.

In summary, after showing the Commission what is available she suggested they offer a recommendation on the B-U-G ratings, noting that backlight is not as concerning. The question boils down to if the Commission wants to compromise on the Uplight and Glare standards in order to promote the use of LEDs or is it more important to keep a restrictive standard and wait for the industry to respond with more options. Currently in the ordinance is a B3-U1-G1.

Throughout discussion, Ms. Tuch responded to various questions/comments from the Commission regarding the different standards, some being but are not limited to: try to explain the difference in the U-1 and U-2 Uplight standards; the new LED streetlights that are in the City now in the residential neighborhoods are B1-U1-G1 which is the standard for all residential street lights; for commercial streets the rating is B3-U3-G3; non-LED fixture are controlled by the lumen rating and by the cut-off; the standards are not permanent and can be amended; is there a way to dim LED lights; how did staff come up with a B3-U2-U2 rating; confirmation that the 2025 plan addresses high efficiency lighting as a goal; who determined the residential and commercial standards; and what are the standards in Buncombe County's ordinance.

Chairman Cannady opened the public hearing at 6:02 p.m.

Mr. Bernard Arghiere said he has worked with staff for the past 4-5 years on and off on the lighting issues. He said that there are a lot of alternatives available now. Glare is a big issue for police, night vision for aging people, etc. He also noted that there will be a lot more choices coming out soon.

Chairman Cannady closed the public hearing at 6:06 p.m.

After each Commissioner explained their thoughts, Vice-Chairman Goldstein moved to approve the wording amendment with the reaffirmation of the B-U-G standards in the ordinance (B3-U1-G1) and to recommend staff to study the full cut-off with SACEE's recommendation and take their comments to City Council. This motion was seconded by Mr. Minicozzi and carried unanimously on a 7-0 vote.

Chairman Cannady supports the motion; however, he does not support full cut-off without having more information. He did not want to restrict people from using light fixtures that are decorative.

### **Other Business**

Chairman Cannady announced the next meeting on October 3, 2012, at 5:00 p.m. in the First Floor Conference Room in the City Hall Building.

**Adjournment**

At 6:12 p.m., Ms. Mathews moved to adjourn the meeting. This motion was seconded by Mr. Smith and carried unanimously on a 7-0 vote.